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133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Crossman and G. Manning

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SUMMARY

Audits, public records, and meetings of community school operators and sponsors

- Requires the Auditor of State to annually audit all accounts, reports, records, and files regarding receipt or expenditure of public funds received by each operator of a community school.
- Specifies that any record pertaining to the delivery of educational services, leases, or any other record regarding the management or operation of a community school kept by the school's sponsor or governing authority or any nonprofit or for profit entity under contract with the school is a public record.
- Requires each community school operator to comply with the Open Meetings Law as if it were a public office.

Community school operator profits

- Limits a community school operator's profit to not more than 5% of the total payments the community school receives from the state.
- Establishes a procedure for use of unspent funds for the next school year or return of them to the community school if the operator's contract is at the end of its term.

Conversion to nonprofit community school operators

- Provides that, on or after July 1, 2023, a community school with a for profit operator no longer qualifies as a public school.
- Specifies that only a nonprofit organization or governing board of an educational service center (ESC) may enter into or renew a contract to be the operator of a community school after the bill's effective date.

- Requires a for profit entity to convert to a nonprofit organization in order to enter into or renew a contract to operate community schools.
- Permits a for profit individual or organization to continue to provide services under a contract entered into prior to the bill's effective date until July 1, 2023.

DETAILED ANALYSIS

Annual audits of community school operators

The bill generally requires the Auditor of State to annually audit each community school operator. Each audit must cover all accounts, reports, records, and files regarding the operator's receipt or expenditure of public funds relating to the delivery of educational services to, or the management and operation of, a community school.¹

Community schools, themselves, and their governing authorities are amenable to the Public Audit Law under continuing law.²

Public records of community school operators and sponsors

The bill specifies that a "public record" includes records pertaining to the delivery of educational services, leases, or any other records regarding the management and operation of a community school kept by the school's sponsor or governing authority or any nonprofit entity that has contracted to provide services to the school.³ Thus, it subjects to release under the Public Records Law such documents held by a public or private operator or sponsor.

Under continuing law, a "public record" is generally any record, regardless of physical form or characteristic, kept by any public office that relates to the operation of that office. Subject to several specific exceptions, each public office, upon request, must make public records available for inspection or provide copies of them at cost within a reasonable period of time.⁴ Community schools, themselves, and their governing authorities are subject to the Public Records Law.⁵ In addition, any public entity that sponsors a community school is subject to the Public Records Law.

Student academic and discipline records are not subject to release under the Public Records Law, because their disclosure generally requires consent under state and federal student privacy laws.⁶

¹ R.C. 117.102; conforming change in R.C. 117.11.

² R.C. 3314.03(A)(11)(d), not in the bill (reference to R.C Chapter 117 (Public Audit Law)).

³ R.C. 149.43.

⁴ R.C. 149.011, not in the bill, and 149.43(B).

⁵ R.C. 3314.03(A)(11)(d) (reference to R.C 149.43).

⁶ R.C. 149.43(A)(1)(v). See also R.C. 3319.321, not in the bill, and the federal Family Educational Rights and Privacy Act (20 United States Code 1232g).

Community school operator public meetings

Under the bill, each nonprofit or for profit entity and each individual that contracts with a community school to provide operator services must comply with the Open Meetings Law with respect to all matters pertaining to the delivery of educational services by, and the management and operation of, the community school as if it were a public office.⁷ Under that law, any state or local government board, commission, committee, council, or similar decision-making body must give specified public notice of its meetings, open them to the public, and keep and file minutes of its meetings. In addition, official actions of the public body must be made in the open public meeting, but it may meet in executive session to discuss (but not act on) certain prescribed matters.⁸

Community school operator profits

Limit

The bill limits any profits realized through payments from a community school to its operator on and after the bill's effective date to not more than 5% of the total amount of payments that the school receives from the state.⁹ Under current law, an operator that receives more than 20% of the annual gross revenues of a community school must provide a detailed accounting including the nature and costs of goods and services it provides to the community school.¹⁰

Unspent funds

Under the bill, at the end of each fiscal year for which an operator's contract is in effect, the governing authority of a community school may require the operator to apply any unexpended and unobligated funds paid to it by the school to any payment the school will owe to the operator during the next fiscal year. If there are funds remaining at the end of the fiscal year in which the contract expires, the operator must return those funds to the school. The bill requires the fiscal officer of each community school to report to the Department of Education and the Auditor of State the amount of any funds kept or returned by an operator.¹¹ (The bill refers to the school's fiscal officer as its "treasurer," but the actual statutory term elsewhere in continuing law is "fiscal officer.")¹²

⁷ R.C. 3314.0310.

⁸ R.C. 121.22, not in the bill.

⁹ R.C. 3314.0311.

¹⁰ R.C. 3314.024, not in the bill.

¹¹ R.C. 3314.0312.

¹² See R.C. 3314.011, not in the bill, for appointment of the school fiscal officer. See also R.C. 3314.023, 3314.032, 3314.037, 3314.17, 3314.19, 3314.51, and 3314.52, none in the bill except for R.C. 3314.032).

Requirement for nonprofit operators after July 1, 2023

The bill provides that, on or after July 1, 2023, a community school with a for profit operator no longer qualifies as a public school will lose its status and benefits as a school to which Community School Law applies.¹³ Accordingly, it operates as a public community school after that date, if it has an operator at all, the school must contract with one that is a nonprofit entity.

Definition of operator

The bill revises the definition of an operator to limit all new operators to only nonprofit entities. Specifically, under the bill, an “operator” is a nonprofit organization or governing board of an educational service center (ESC) that either:

1. Manages the daily operations of a community school pursuant to a contract between the operator or management company and the school’s governing authority; or
2. Provides programmatic oversight and support to a community school under a contract with the school’s governing authority and that retains the right to terminate its affiliation with the school if the school fails to meet the operator’s or management company’s quality standards.

Under current law any “individual or organization” may act as an operator. This provision is removed by the bill. The effect of the bill is to prohibit for profit entities from entering into new, or renewing, contracts with community schools on and after the bill’s effective date.¹⁴

Their contracts entered into or renewed before that date may continue in effect, but by July 1, 2023, those operators must be nonprofit entities.¹⁵

Conversion to a nonprofit operator

The bill provides a method for an operator, which is currently a for profit entity, to continue its relationship with a community school while that school retains its status as a community school. That is for the operator to become a nonprofit entity by July 1, 2023. On or before January 1, 2022, such an entity must notify the governing authority of each community school with which the operator has a contract regarding its decision to convert to a nonprofit entity in compliance with the bill’s new definition of operator.¹⁶

¹³ R.C. 3314.01(B)(2).

¹⁴ R.C. 3314.02(A)(8).

¹⁵ R.C. 3314.01 and 3314.032.

¹⁶ R.C. 3314.0111 (first paragraph).

Community school selection of ESC as operator

The bill also specifically permits the governing board of an ESC to act as an operator of a community school. However, it expressly prohibits an ESC from acting as both a school's sponsor and operator.¹⁷

In the event that a for profit entity does not comply with the requirement to convert to a nonprofit entity, the school's governing authority must (1) identify an ESC to act as the new operator of the community school not later than July 1, 2022, and notify the school's sponsor of that decision and (2) provide notice to the parents of current and prospective students.

A governing authority that fails to do so must close by the end of the 2022-2023 school year.

Background

Community schools (often called "charter schools") are public schools that operate independently from any school district under a contract with a sponsoring entity. A conversion community school, created by converting an existing school, may be located in and sponsored by any school district or educational service center in the state. On the other hand, a "start-up" community school may be located only in a "challenged school district." A challenged school district is any of the following: (1) a "Big-Eight" district (Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, or Youngstown), (2) a poorly performing district as determined by its performance index score, value-added progress dimension, or overall ratings on the state report card, or (3) a district in the original community school pilot project area (Lucas County).

Many, but not all, community school governing authorities contract with private or public entities to run the day-to-day operations of their schools. A school's contract with the "operator" is separate from the school's contract with its sponsor.

The sponsor of a start-up community school may be any of the following:

1. The school district in which the school is located;
2. A school district located in the same county as the district in which the school is located has a major portion of its territory;
3. A joint vocational school district serving the same county as the district in which the school is located has a major portion of its territory;
4. An educational service center;
5. The board of trustees of a state university (or designee) under specified conditions;
6. A federally tax-exempt entity under specified conditions;
7. The Department of Education's Office of Ohio School Sponsorship for a limited number of community schools; or

¹⁷ R.C. 3314.0111(A) and 3314.02(A)(8); conforming changes in R.C. 3313.844 and 3313.849.

8. The mayor of Columbus for new community schools in the Columbus City School District under specified conditions. (However, it does not appear that those conditions have been triggered and cannot be triggered now without further legislation.)

HISTORY

Action	Date
Introduced	03-12-20
